

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

KIPTON FLEMING,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case Number CIV-05-690-C
	)	
EDWARD L. EVANS,	)	
	)	
Respondent.	)	

**ORDER**

This action for habeas corpus relief brought by a prisoner proceeding pro se, was referred to United States Magistrate Judge Robert E. Bacharach, consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Bacharach entered a Report and Recommendation (“R&R”) on September 26, 2008, to which neither Petitioner or Respondent have objected.

At this stage, the issue considered by Judge Bacharach was the timing of Petitioner’s habeas action. Judge Bacharach considered whether Petitioner’s challenge to his felony conviction and misdemeanor conviction was timely. Judge Bacharach conducted an evidentiary hearing and has presented the Court with a very thorough R&R outlining the factual issues presented at that hearing. In the R&R, Judge Bacharach found that Petitioner’s challenge to the misdemeanor count was untimely but that due to the egregious misconduct of his attorney the time limitation for challenging the felony count was tolled and consequently Petitioner’s filing was timely as to that charge. After review, the Court finds the R&R well supported both factually and legally, and it will be adopted in full.

As set forth more fully herein, the Court adopts in full the thorough and well-reasoned Report and Recommendation (Dkt. No. 110). To the extent Petitioner seeks relief from his conviction on the misdemeanor charge, that claim is untimely and is DISMISSED with prejudice. As for Petitioner's challenge to the felony conviction, this action is timely brought. Accordingly, this matter is recommitted to the Magistrate Judge for further proceedings consistent with the original Order of Referral (Dkt. No. 4).

IT IS SO ORDERED this 7th day of November, 2008.

  
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ROBIN J. CAUTHRON  
United States District Judge